

**MEMO**

**TO: Board of Finance**  
**FROM: Gene Richards, Burlington International Airport**  
**DATE: April 15, 2013**  
**SUBJECT: Finance Board Approval Request – NYNEX, d/b/a Verizon Wireless Lease Agreement**

The Burlington International Airport seeks Finance Board and City Council approval to enter into an agreement with NYNEX, d/b/a Verizon Wireless, for the installation of cellular towers on the sixth level of the Airport's parking garage.

NYNEX is seeking an agreement for an initial term of ten years and two months, from May 1, 2013 to June 30, 2023. In addition, NYNEX seeks two additional five-year terms, with start dates of July 1, 2023 and July 1, 2028 respectively. Each renewal terms must be mutually agreeable between both parties. In addition, the lease agreement will include a clause for the relocation of the cellular structures should it be deemed necessary. The annual rental for year one is \$24,000, and will be adjusted annually by a 3% escalator.

Thank you for your consideration.

A draft resolution is included with this Request.

## BUILDING AND ROOFTOP LEASE AGREEMENT

This Building and Rooftop Lease Agreement (the "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2013, between the **City of Burlington**, Airport Department d/b/a Burlington International Airport, with its principal offices located at 1200 Airport Drive, South Burlington, Vermont 05403, hereinafter designated "Lessor," and **NYNEX Mobile Limited Partnership 1 and Cellco Partnership**, each d/b/a **Verizon Wireless**, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated "Lessee." Lessor and Lessee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** Lessor hereby leases to Lessee approximately 288 square feet of space for the installation, maintenance, use and operation of an equipment building (the "Equipment Space", measuring  $\pm 12' \times 24'$ ) on the roof of the parking structure that forms a component of Burlington International Airport (the "Building") located at 1200 Airport Drive, South Burlington, Chittenden County, Vermont, the underlying real property of which is legally described in **Exhibit "A"** attached hereto and made a part hereof (the Building and such real property are hereinafter sometimes collectively referred to as the "Property"), together with exterior space on the north, west and southeast stair towers of the Building for the installation, maintenance, use and operation of antennas, remote radioheads and other communications equipment and appurtenances (the "Antenna Space"), together with space in the equipment closet on the fifth floor (green roof level) of the southeast stair tower for the installation, maintenance, use and operation of remote radioheads and other communications equipment and appurtenances ("Closet Space"), together with such additional space within the Building and on the roof and exterior of the Building for the installation, operation and maintenance of wires, cables, cable tray, conduits and pipes (the "Cabling Space") running between and among the Equipment Space, the Closet Space and the Antenna Space and to and among all necessary electrical and telephone utility sources located within the Building or on the Property; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property and in and through the Building to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of Lessee's communications facility. The Equipment Space, Antenna Space, Closet Space and Cabling Space are hereinafter collectively referred to as the "Premises" and are as shown on **Exhibit "B"** attached hereto and made a part hereof.

Lessee agrees that its antennas mounted on the exterior of the north and west stair towers shall be painted to match the brick to which they will be affixed. Lessee agrees that its antennas mounted on the southeast stair tower shall be placed behind the existing mechanical screen wall, and that it shall replace the existing mechanical screen wall (at its expense) with one made from RF transparent material (such as fiberglass) but which shall have a final, finished appearance that is substantially similar to the appearance of the existing mechanical screen wall. Lessee agrees that

its equipment building shall be sided with materials that match the existing materials on the roof of the Building, as mutually agreed upon by the Parties.

Lessor shall permit Lessee to connect its equipment to Lessor's emergency backup generator, and grants to Lessee the right to draw up to 50 kW of power therefrom, for the purpose of providing backup electrical power to Lessee's communications equipment.

In the event there are not sufficient electric and telephone utility sources located within the Building or on the Property, Lessor agrees to grant Lessee or the local utility provider the right to install such utilities on, over and/or under the Property and through the Building necessary for Lessee to operate its communications facility, provided the location of such utilities shall be as reasonably designated by Lessor.

2. DELIVERY. Lessor shall deliver the Premises to Lessee on the Commencement Date, as hereinafter defined, in a condition ready for Lessee's construction of its improvements and clean and free of debris. Lessor represents and warrants to Lessee that as of the Commencement Date, the existing structure of the Building (including without limitation the roof, foundations, exterior walls), the common areas and all Building systems (including, without limitation, the plumbing, electrical, ventilating, air conditioning, heating, and loading doors, if any) are (a) in good operating condition and free of any leakage; (b) in compliance with all Laws (as defined in Paragraph 34 below); and (c) free of all hazardous substances, as such term may be defined under any applicable federal, state or local law. If a breach of the representation and warranty contained in this Paragraph 2 is discovered at any time during the Term, as hereinafter defined, Lessor shall, promptly after receipt of written notice from Lessee setting forth a description of such non-compliance, rectify same at Lessor's expense. Lessor further represents and warrants to Lessee that Lessor has no knowledge of any claim having been made by any governmental agency that a violation of applicable building codes, regulations, or ordinances exists with regard to the Building, or any part thereof, as of the Commencement Date.

3. TERM; RENTAL; ELECTRICAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for ten (10) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Twenty Four Thousand Dollars (\$24,000.00) to be paid in equal monthly installments of Two Thousand Dollars (\$2,000.00) on the first day of the month, in advance, to Lessor or to such other person, firm or place as Lessor may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 24 below. This Agreement shall commence based upon the date Lessee commences installation of the equipment on the Premises. In the event the date Lessee commences installation of the equipment on the Premises falls between the 1<sup>st</sup> and 15<sup>th</sup> of the month, this Agreement shall commence on the 1<sup>st</sup> of that month and if the date installation commences falls between the 16<sup>th</sup> and 31<sup>st</sup> of the month, then this Agreement shall commence on the 1<sup>st</sup> day of the following month (either the "Commencement Date"). Lessor and Lessee agree that they shall acknowledge in writing the Commencement Date. Lessor and Lessee acknowledge and agree that initial rental payment(s) shall not actually be sent by Lessee until

thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the written acknowledgement confirming the Commencement Date is dated January 14, Lessee shall send to the Lessor the rental payments for January 1 and February 1 by February 13.

Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and in such event, Lessor agrees to provide to Lessee bank routing information for such purpose upon request of Lessee.

b. Lessor hereby agrees to provide to Lessee certain documentation (the "Rental Documentation") evidencing Lessor's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to Lessee in Lessee's reasonable discretion, evidencing Lessor's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Lessee, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by Lessee in Lessee's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Lessee, Lessor agrees to provide updated Rental Documentation in a form reasonably acceptable to Lessee. The Rental Documentation shall be provided to Lessee in accordance with the provisions of and at the address given in Paragraph 24. Delivery of Rental Documentation to Lessee shall be a prerequisite for the payment of any rent by Lessee and notwithstanding anything to the contrary herein, Lessee shall have no obligation to make any rental payments until Rental Documentation has been supplied to Lessee as provided herein.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of Lessor shall provide to Lessee Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Lessee, any assignee(s) or transferee(s) of Lessor agrees to provide updated Rental Documentation in a form reasonably acceptable to Lessee. Delivery of Rental Documentation to Lessee by any assignee(s), transferee(s) or other successor(s) in interest of Lessor shall be a prerequisite for the payment of any rent by Lessee to such party and notwithstanding anything to the contrary herein, Lessee shall have no obligation to make any rental payments to any assignee(s), transferee(s) or other successor(s) in interest of Lessor until Rental Documentation has been supplied to Lessee as provided herein.

c. Lessor shall, at all times during the Term, provide electrical service and telephone service access within the Premises. If permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by Lessee's installation. In the alternative, if permitted by the local utility company servicing the Premises, Lessee shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee's installation. In the event such sub-meter is installed, the Lessee shall pay the utility directly for its power consumption, if billed by the utility, and if not billed by the utility, then the Lessee shall pay the Lessor thirty (30) days after receipt of an invoice from Lessor indicating the usage amount based

upon Lessor's reading of the sub-meter. All invoices for power consumption shall be sent by Lessor to Lessee at: Verizon Wireless, P.O. Box 182727, Columbus, OH 43218. Lessee shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by Lessor. Lessee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

4. EXTENSIONS. This Agreement shall automatically be extended for two (2) additional five (5) year terms unless (a) Lessee is in default at the time of commencement of an extension term following written notice of default from Lessor and the expiration of the applicable cure period(s), or (b) Lessee or Lessor terminates this Agreement at the end of the then current term by giving Lessor written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. RENT ESCALATION. Annual rental for each year of the Term (as hereinafter defined) shall be equal to one hundred three percent (103%) of the annual rental payable with respect to the immediately preceding year of the Term.

6. ADDITIONAL EXTENSIONS. If at the end of the second (2<sup>nd</sup>) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions on a month to month basis . Annual rental for each year of each such additional five (5) year term shall be equal to 103% of the annual rental payable with respect to the immediately preceding year of the term. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. Lessee shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which Lessor demonstrates is the result of Lessee's use of the Premises and/or the installation, maintenance, and operation of the Lessee's improvements, and any sales tax imposed on the rent (except to the extent that Lessee is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which Lessor demonstrates arises from the Lessee's improvements and/or Lessee's use of the Premises. Lessor and Lessee shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by Lessor or Lessee at the Property. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making Lessee liable for any portion of Lessor's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, Lessor shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by Lessee, there is a reduction, credit or repayment received by the Lessor for any taxes previously paid by Lessee, Lessor agrees to promptly reimburse to Lessee the amount of said reduction, credit or repayment. In the event that Lessee does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, Lessor will pursue such dispute at Lessee's sole cost and expense upon written request of Lessee.

8. USE; GOVERNMENTAL APPROVALS. Lessee shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits shall be at Lessee's expense and their installation shall be at the discretion and option of Lessee. Lessee shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that Lessee's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis which will permit Lessee use of the Premises as set forth above. Lessor shall cooperate with Lessee in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Lessee. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Lessee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Lessee determines that any building structural analysis is unsatisfactory; (v) Lessee determines that the Premises are no longer technically compatible for its use, or (vi) Lessee, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, Lessee shall have the right to terminate this Agreement. Notice of Lessee's exercise of its right to terminate shall be given to Lessor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Lessee, or upon such later date as designated by Lessee. All rentals paid to said termination date shall be retained by Lessor. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the Lessee shall have no further obligations for the payment of rent to Lessor.

9. MAINTENANCE.

a. During the Term, Lessee will maintain the non-structural portions of the Premises in good condition, reasonable wear and tear and casualty damage excepted, but excluding any items which are the responsibility of Lessor pursuant to Paragraph 9(b) below.

b. During the Term, Lessor shall maintain, in good operating condition and repair, the structural elements of the Building and the Premises, and all Building systems (including, but not limited to, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the common areas) and the common areas. Lessor shall repair any defect in the above within thirty (30) days, or such shorter period as may be required by any governmental authority having jurisdiction, after receipt of written notice from Lessee describing such defect, unless the defect constitutes an emergency, in which case Lessor shall cure the defect as quickly as possible, but not later than five (5) days after receipt of notice. If Lessor fails to make such repairs, Lessee may do so, and the cost thereof shall be payable by Lessor to Lessee on demand together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws, or, at Lessee's option, Lessee may deduct such amounts paid out of any rents or other sums that may be due or owing under this Agreement. In the event of an emergency, Lessee, at its option, may make such repairs at Lessor's expense, before giving any written notice, but Lessee shall notify Lessor in writing within three (3) business days following such emergency.

c. Subject to the terms of this provision, upon request of the Lessor, Lessee agrees to relocate its equipment on a temporary or permanent basis to another location on the Property, hereinafter referred to as a "Relocation," for the purpose of (i) in the case of a temporary relocation, Lessor performing maintenance, repair or similar work at the Property or in the Building, or (ii) in the case of a permanent relocation, Lessor expanding or otherwise modifying the Building. In all cases, Lessee shall only agree to a Relocation upon the following terms and conditions:

- i. The Relocation is similar to Lessee's existing location in size and is fully compatible for Lessee's use, in Lessee's reasonable determination;
- ii. Lessor pays all costs incurred by Lessee for and in connection with relocating Lessee's equipment to the Relocation (including, without limitation, legal costs, engineering fees, permit fees and construction costs) and improving the Relocation so that it is fully compatible for the Lessee's use, in Lessee's reasonable determination;
- iii. Lessor gives Lessee at least ninety (90) days written notice prior to requiring Lessee to relocate, provided that Lessor acknowledges and agrees that Lessee will require longer advance notice to effect a permanent Relocation, and that Lessor shall not expand or otherwise modify the Building in a manner that is adverse to Lessee's communications facility until Lessee shall have had a reasonable opportunity to effect a Relocation as described herein;
- iv. Lessee's use at the Premises is not interrupted or diminished during the Relocation and Lessee is allowed, if necessary, in Lessee's reasonable determination, to place a temporary installation on the Property during any such Relocation;

- v. In the event of a temporary Relocation, upon the completion of any maintenance, repair or similar work by Lessor, Lessee is permitted to return to its original location from the temporary location with all costs for the same being paid by Lessor; and
- vi. In the event of a permanent Relocation, once the Relocation has been completed and Lessee's equipment at the new location is operational, any costs associated with removing or restoring the original location shall be paid by Lessor.

10. INDEMNIFICATION. Subject to Paragraph 11 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

11. INSURANCE.

a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. Lessor and Lessee each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. Lessor and Lessee each agree that it will include the other Party as an additional insured.

c. In addition, Lessor shall obtain and keep in force during the Term a policy or policies insuring against loss or damage to the Building at full replacement cost, as the same shall exist from time to time without a coinsurance feature. Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance.

12. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 10 and 30, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

13. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided Lessee is not in default hereunder beyond applicable notice and cure periods, Lessee shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to Lessor and provided that Lessee shall have paid a termination fee to Lessor in the amount of six (6) months' rent at the then applicable rate as additional rent.

14. INTERFERENCE. Lessee agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of Lessor or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed Lessee's equipment causes such interference, and after Lessor has notified Lessee in writing of such interference, Lessee will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Lessee's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will Lessor be entitled to terminate this Agreement or relocate the equipment as long as Lessee is making a good faith effort to remedy the interference issue. Lessor agrees that Lessor and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

15. REMOVAL AT END OF TERM. Lessee shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of this Agreement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. Lessor agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Lessee shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 34 below). If such time for removal causes Lessee to remain on the Premises after termination of this Agreement, Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

16. HOLDOVER. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 15 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, Lessee holds over in violation of Paragraph 15 and this Paragraph 16, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 15 shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

17. RIGHT OF FIRST REFUSAL. If Lessor elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, Lessee shall have the right of first refusal to meet any such bona fide offer on the same terms and conditions of such offer. If Lessee fails to meet such bona fide offer within thirty (30) days after written notice thereof from Lessor, Lessor may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

18. RIGHTS UPON SALE. Should Lessor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Building thereon to a purchaser other than Lessee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third party by easement or other legal instrument an interest in and to that portion of the Building and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, Lessor shall not be released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of this Agreement.

19. QUIET ENJOYMENT. Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

20. TITLE. Lessor represents and warrants to Lessee as of the execution date of this Agreement, and covenants during the Term that Lessor is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. Lessor further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by Lessee as set forth above.

21. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between Lessor and Lessee and that no verbal or oral

agreements, promises or understandings shall be binding upon either Lessor or Lessee in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

22. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

23. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

24. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Lessor:	City of Burlington, Airport Department 1200 Airport Drive South Burlington, Vermont 05403
Lessee:	NYNEX Mobile Limited Partnership 1 d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

25. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

26. SUBORDINATION AND NON-DISTURBANCE. Lessor shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by Lessor which from time to time may encumber all or part of the Property, Building or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Building, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Building, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of this Agreement, (2) fulfill Lessor's obligations under this Agreement, and (3) promptly cure all of the then-existing Lessor defaults under this Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that this Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Building and (3) agrees to accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

27. RECORDING. Lessor agrees to execute a Memorandum of this Agreement which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

28. DEFAULT.

a. In the event there is a breach by Lessee with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, Lessor shall give Lessee written notice of such breach. After receipt of such written notice, Lessee shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Lessee shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than

thirty (30) days and Lessee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Lessor may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Lessor with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Lessor written notice of such breach. After receipt of such written notice, Lessor shall have thirty (30) days in which to cure any such breach, provided Lessor shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Lessor commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Lessee may not maintain any action or effect any remedies for default against Lessor unless and until Lessor has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if Lessor fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by Lessor if the failure to perform such an obligation interferes with Lessee's ability to conduct its business in the Building; provided, however, that if the nature of Lessor's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

29. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, Lessor shall use reasonable efforts to mitigate its damages in connection with a default by Lessee. If Lessee so performs any of Lessor's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by Lessee shall immediately be owing by Lessor to Lessee, and Lessor shall pay to Lessee upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if Lessor does not pay Lessee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from Lessor, Lessee may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to Lessor until the full undisputed amount, including all accrued interest, is fully reimbursed to Lessee.

30. ENVIRONMENTAL.

a. Lessor will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Building or Property, unless such conditions or concerns are caused by the specific activities of Lessee in the Premises.

b. Lessor shall hold Lessee harmless and indemnify Lessee from and assume all duties, responsibility and liability at Lessor's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by Lessee; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Building or Property or activities conducted thereon, unless such environmental conditions are caused by Lessee.

31. CASUALTY. In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may, at any time following such fire or other casualty, provided Lessor has not completed the restoration required to permit Lessee to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to Lessor. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired.

32. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Building, Lessee, in Lessee's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, Lessee may, at Lessee's option, to be exercised in writing within fifteen (15) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. Lessee may on its own behalf make a claim in any

condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If Lessee does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, Lessor shall promptly repair any damage to the Premises caused by such condemning authority.

33. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

34. APPLICABLE LAWS. During the Term, Lessor shall maintain the Property, the Building, Building systems, common areas of the Building, and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). Lessee shall, in respect to the condition of the Premises and at Lessee's sole cost and expense, comply with (a) all Laws relating solely to Lessee's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by Lessee in the Premises. It shall be Lessor's obligation to comply with all Laws relating to the Building in general, without regard to specific use (including, without limitation, modifications required to enable Lessee to obtain all necessary building permits).

35. SURVIVAL. The provisions of this Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

36. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of this Agreement. They shall not affect or be utilized in the construction or interpretation of this Agreement.

*Signature Pages to Follow*

DRAFT

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**Lessor:**

**City of Burlington**

\_\_\_\_\_  
Witness

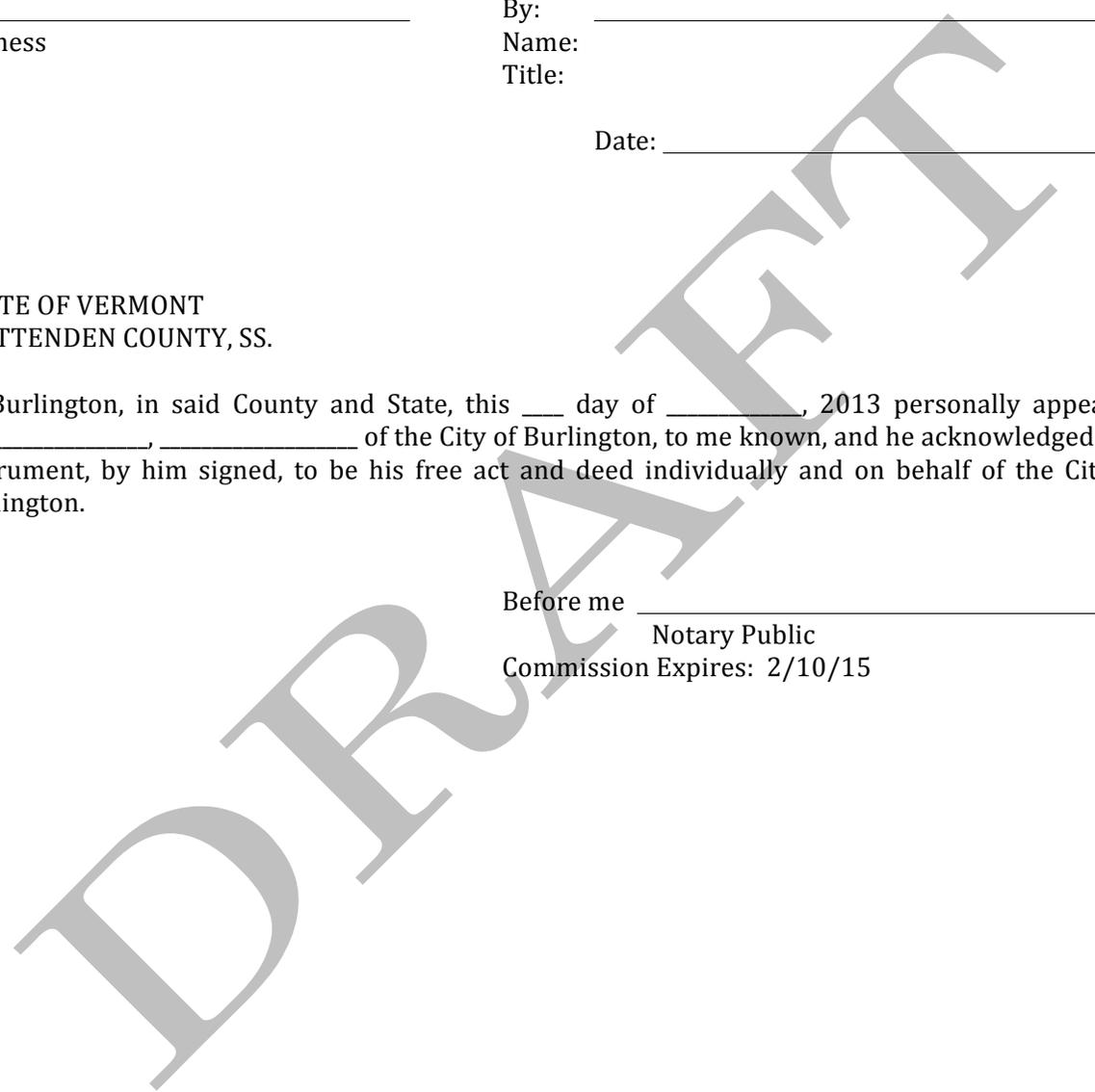
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STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this \_\_\_ day of \_\_\_\_\_, 2013 personally appeared \_\_\_\_\_, \_\_\_\_\_ of the City of Burlington, to me known, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the City of Burlington.

Before me \_\_\_\_\_  
Notary Public  
Commission Expires: 2/10/15



**Lessee:**

Cellco Partnership d/b/a Verizon Wireless

NYNEX Mobile Limited Partnership 1 d/b/a  
Verizon Wireless

By: Cellco Partnership, its General Partner

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
David R. Heverling  
Area Vice President Network

Date: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF WORCESTER, SS.

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, personally appeared David R. Heverling, personally known to me to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity, that by his signature on the instrument, the entities, Cellco Partnership, for itself and as the General Partner of NYNEX Mobile Limited Partnership 1, upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the City of Westborough, County of Worcester, Commonwealth of Massachusetts.

Before me: \_\_\_\_\_

Notary Public

Commission Expires:

**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

DRAFT

**EXHIBIT "B"**  
**SITE PLAN OF EQUIPMENT SPACE, CLOSET SPACE**  
**ANTENNA SPACE AND CABLING SPACE**

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**AUTHORIZATION TO EXECUTE LEASE  
FOR VERIZON WIRELESS CELLULAR TOWER  
AT BURLINGTON INTERNATIONAL AIRPORT**

In the year Two Thousand Thirteen.....

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, the City of Burlington (“City”) owns and operates the Burlington International Airport in South Burlington, Vermont (“Airport”), which includes a parking garage; and

WHEREAS, the NYNEX Mobile Limited Partnership (d/b/a Verizon Wireless), seeks to lease property on the top level of the Airport parking garage, at the total rental rate of \$24,000 per year to be adjusted by 3% annually as described in a proposed lease, which when executed is intended to be effective June 1, 2013 and have a term of five years and one month, and two renewal terms of an additional five years each effective July 1, 2018 (“Lease”); and

WHEREAS, the Interim Director of Aviation Gene Richards deems the Lease to be in the best interest of the City, Airport and public airport purposes; and

WHEREAS, the Board of Airport Commissioners approved of the Lease on March 18, 2013; and

WHEREAS, the Board of Finance approved of the Lease on April 15, 2013,

NOW THEREFORE BE IT RESOLVED, that the Mayor of the City of Burlington, Miro Weinberger is authorized to execute the Lease between NYNEX Mobile Limited Partnership and the City of Burlington, and such other documents as will be required for the lawful culmination of said lease, all subject to the prior approval of the Chief Administrative Officer and the City Attorney as necessary.

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**AUTHORIZATION TO EXECUTE LEASE  
FOR VERIZON WIRELESS CELLULAR TOWER  
AT BURLINGTON INTERNATIONAL AIRPORT**

NAME/PURPOSE OF CONTRACTS:	NYNEX Mobile Limited Partnership
ADMINISTRATING DEPARTMENT:	Airport
CONTRACT AMOUNTS:	Per Agreement
CONTRACT TERM:	Five years and one month effective June 1, 2013
RENEWAL TERM:	Two five years effective July 1, 2018
DESIGNATION OF FUNDS:	
FISCAL YEAR:	2013
ACCOUNT NAME:	Terminal Operations
ACCOUNT NUMBER:	4505

200020-185 ; Resolution – “Verizon Wireless” Lease Agreement

